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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 OLIVER MATTHEWS, Jr.,  
12 CDCR # K-39692

13 Plaintiff,

14  
15 vs.  
16

17 K. BAKER, Hearings Officer for the Board  
18 of Parole Hearings, State of California,

19  
20 Defendant.  
21  
22

Civil 08-0011 JLS (PCL)  
No.

**ORDER:**

**(1) GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*,  
IMPOSING NO INITIAL PARTIAL  
FILING FEE AND GARNISHING  
\$350.00 BALANCE FROM  
PRISONER TRUST ACCOUNT  
[Doc. No. 2];**

**AND**

**(2) DISMISSING ACTION FOR  
SEEKING MONETARY DAMAGES  
AGAINST DEFENDANT WHO IS  
IMMUNE PURSUANT  
TO 28 U.S.C. §§ 1915(e)(2)(B)  
& 1915A(b)**

23 Plaintiff, a state inmate currently incarcerated at Richard J. Donovan Correctional Facility  
24 in San Diego, California, and proceeding pro se, has filed a civil rights Complaint pursuant to  
25 42 U.S.C. § 1983. Plaintiff claims that his constitutional rights were violated at his parole  
26 revocation hearing by Defendant K. Baker, Deputy Commissioner for the Board of Parole  
27 Hearings. Plaintiff seeks \$200,000 in punitive damages and \$70,000 for “pain and suffering.”  
28 (Compl. at 7.)

1 Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead,  
2 he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a)  
3 [Doc. No. 2].

4 **I. MOTION TO PROCEED IFP**

5 All parties instituting any civil action, suit or proceeding in a district court of the United  
6 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28  
7 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay only if the party is  
8 granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493  
9 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).  
10 Prisoners granted leave to proceed IFP however, remain obligated to pay the entire fee in  
11 installments, regardless of whether the action is ultimately dismissed for any reason. *See* 28  
12 U.S.C. § 1915(b)(1) & (2).

13 The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C.  
14 § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to  
15 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff’s trust account statement shows that  
16 he has insufficient funds from which to pay an initial partial filing fee.

17 Accordingly, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP [Doc. No. 2] and  
18 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the Court further  
19 orders the Secretary of the California Department of Corrections and Rehabilitation (“CDCR”)  
20 to garnish the entire \$350 balance of the filing fees owed in this case, collect and forward them  
21 to the Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.  
22 § 1915(b)(1).

23 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

24 The Prison Litigation Reform Act (“PLRA”)’s amendments to 28 U.S.C. § 1915 also  
25 obligate the Court to review complaints filed by all persons proceeding IFP and by those, like  
26 Plaintiff, who are “incarcerated or detained in any facility [and] accused of, sentenced for, or  
27 adjudicated delinquent for, violations of criminal law or the terms or conditions of parole,  
28 probation, pretrial release, or diversionary program,” “as soon as practicable after docketing.”

1 See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Under these provisions, the Court must sua  
2 sponte dismiss any prisoner civil action and all other IFP complaints, or any portions thereof,  
3 which are frivolous, malicious, fail to state a claim, or which seek damages from defendants who  
4 are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-  
5 27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir.  
6 2000) (§ 1915A).

7 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte  
8 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. However, 28  
9 U.S.C. § 1915(e)(2) and § 1915A now mandate that the court reviewing an IFP or prisoner's suit  
10 make and rule on its own motion to dismiss before directing that the Complaint be served by the  
11 U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 (“[S]ection 1915(e) not only permits,  
12 but requires a district court to dismiss an in forma pauperis complaint that fails to state a  
13 claim.”); see also *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (discussing  
14 § 1915A).

15 “[W]hen determining whether a complaint states a claim, a court must accept as true all  
16 allegations of material fact and must construe those facts in the light most favorable to the  
17 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)  
18 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). Here, however, even  
19 presuming Plaintiff's factual allegations true, the Court finds his Complaint both fails to state  
20 a claim upon which relief can be granted and seeks monetary relief from defendants who are  
21 immune. See 28 U.S.C. §§ 1915(e)(2)(B); 1915A(b); *Lopez*, 203 F.3d at 1126-27; *Resnick*, 213  
22 F.3d at 446, n.1.

23 Plaintiff's Complaint is subject to immediate dismissal because he is seeking monetary  
24 damages from a Defendant who is immune from such relief. In his Complaint, Plaintiff seeks  
25 damages against K. Baker, a Deputy Commissioner for the Board of Prison Hearings (“BPH”),  
26 for presiding over Plaintiff's revocation hearing. (Compl. at 2.) Plaintiff alleges that Defendant  
27 Baker violated his right to due process by allowing false testimony from police officers and  
28 failing to permit Plaintiff to provide testimony on his behalf. (*Id.* at 3-5.)

1 However, State parole officials are absolutely immune from damages actions based on  
2 any decision to impose a parole condition, to have a parolee arrested for an alleged parole  
3 violation, or to institute judicial proceedings which result in the revocation of parole. *See*  
4 *Anderson v. Boyd*, 714 F.2d 906, 909 (9th Cir. 1983); *Demoran v. Witt*, 781 F.2d 155, 157 (9th  
5 Cir. 1985) (parole officers are entitled to absolute immunity with respect to the preparation of  
6 parole revocation reports).

7 Accordingly, the Court finds that Plaintiff's Complaint must be dismissed sua sponte for  
8 seeking monetary damages against an immune defendant pursuant to 28 U.S.C. §§ 1915(e)(2)(B)  
9 and 1915A(b). *See Lopez*, 203 F.3d at 1126-27; *Resnick*, 213 F.3d at 446, n.1.

### 10 **III. CONCLUSION AND ORDER**

11 Good cause appearing, **IT IS HEREBY ORDERED:**

12 1. Plaintiff's Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2] is  
13 **GRANTED.**

14 2. The Secretary of California Department of Corrections and Rehabilitation, or his  
15 designee, shall collect from Plaintiff's prison trust account the \$350 balance of the filing fee  
16 owed in this case by collecting monthly payments from the account in an amount equal to twenty  
17 percent (20%) of the preceding month's income and forward payments to the Clerk of the Court  
18 each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).  
19 ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER  
20 ASSIGNED TO THIS ACTION.

21 3. The Clerk of the Court is directed to serve a copy of this Order on James Tilton,  
22 Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,  
23 Sacramento, California 95814.

24 **IT IS FURTHER ORDERED** that:


25 4. Plaintiff's Complaint is **DISMISSED** without prejudice for for seeking monetary  
26 damages against immune defendants. *See* 28 U.S.C. §§ 1915(e)(2)(b) & 1915A(b). However,  
27 Plaintiff is **GRANTED** forty five (45) days leave from the date this Order is "Filed" in which  
28 to file a First Amended Complaint which cures all the deficiencies of pleading noted above.

1 Plaintiff's Amended Complaint must be complete in itself without reference to the superseded  
2 pleading. *See* S. D.CAL. CIVLR. 15.1. Defendants not named and all claims not re-alleged in  
3 the Amended Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565,  
4 567 (9th Cir. 1987).

5 Further, if Plaintiff's Amended Complaint still fails to state a claim upon which relief  
6 may be granted, it may be dismissed without further leave to amend and may hereafter be  
7 counted as a "strike" under 28 U.S.C. § 1915(g). *See McHenry v. Renne*, 84 F.3d 1172, 1177-79  
8 (9th Cir. 1996).

9 5. The Clerk of the Court is directed to mail a form civil rights Complaint to Plaintiff.

10  
11 DATED: February 25, 2008

12   
13 Honorable Janis L. Sammartino  
14 United States District Judge  
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